

*United States Court of Appeals
for the Second Circuit*



APPELLEE'S BRIEF

74-2061

To be Argued by
RALPH L. McMURRY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
JAMES PICKENS, :
Appellant, :
-against- :
WORKMEN'S COMPENSATION BOARD, :
Appellee. :
-----X

BRIEF FOR APPELLEE

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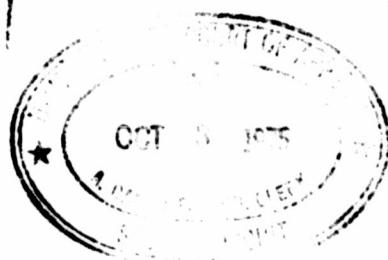


TABLE OF CONTENTS

	<u>PAGE</u>
Preliminary Statement.....	1
Question Presented.....	2
Statement of Facts.....	2
ARGUMENT - APPELLANT'S DISPUTE WITH THE NEW YORK COMPENSATION BOARD CONCERNING THE AMOUNT OF BENEFITS TO WHICH HE IS ENTITLED FAILS TO STATE A FEDERAL CAUSE OF ACTION AND FAILS TO STATE A CLAIM OVER WHICH A FEDERAL COURT HAS SUBJECT MATTER JURISDICTION.....	6
Conclusion.....	8

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BRIEF FOR APPELLEE

Preliminary Statement

This is an appeal from a decision of the United States District Court for the Southern District of New York, dated June 24, 1974, Gagliardi, J., dismissing plaintiff's complaint for lack of subject matter jurisdiction and for failure to state a federal cause of action.

Question Presented

Whether plaintiff's dispute with the New York Workmen's Compensation Board over the amount of benefits awarded him states a federal cause of action or states a claim over which a federal court has subject matter jurisdiction?

Statement of Facts

On April 6, 1967, plaintiff (now appellant herein) allegedly was involved in accident in which he suffered a right inguinal hernia. On June 12, 1969, plaintiff allegedly injured his back.

Plaintiff sought compensation from the Workmen's Compensation Board. There followed a seemingly interminable sequence of proceedings before the Board, which are evidently still going on.

According to the records of the Board, the plaintiff was granted an award for the hernia claim for the period May 4, 1967 to July 17, 1967 in a referee's decision dated December 6, 1967. The same day, however, plaintiff applied to re-open the case, which was done on December 14, 1967, for proof of disability and loss of earnings prior to May 4, 1967. A referee's decision dated March 8, 1968, found three days

intermittent loss of earnings between April 6, 1967 and May 19, 1967. The case was then closed. On April 16, 1968, the case was again re-opened to develop the record on loss of earnings subsequent to April 6, 1967. On August 14, 1968, the case was closed after trial without prejudice until such time as plaintiff submitted medical evidence. Medical expenses related to an alleged prostatic enlargement and back condition, for which there was no medical evidence of causal relation to the alleged accident, were denied.

On December 10, 1969, plaintiff applied to re-open the case, now alleging in addition to his alleged hernia a back injury allegedly resulting from the accident of April 6, 1967. On January 6, 1970, the case was re-opened to consider if the back injury was causally related to the alleged accident.

On August 28, 1970, a referee closed the case on the grounds that no medical evidence established a causal relationship.

A new claim was again then filed with reference to the alleged back injury. On December 10, 1970, a referee closed the case for lack of medical evidence. Evidence by one Dr. Anderson indicated that there was no causal relation between the accident and the conditions complained of. On October 15, 1971, however, the plaintiff applied for a re-opening, which was granted on November 23, 1971 to consider further causally related disability and need for treatment. Plaintiff was afforded a hearing in June, 1972, at which time evidence from two doctors was submitted.

On December 29, 1972, a final Board decision was rendered. This is apparently the last significant Board action taken* and has not been appealed from. This decision affirmed the referee in one of plaintiff's cases but reversed in the other, ordering an award to be made. This was done.

In October, 1974, a claim for disability benefits under the Disability Benefits Law (as opposed to the Workmen's Compensation Law) was indexed for appellant. Pursuant to this claim plaintiff was awarded benefits for the period June 7, 1970, to September 1, 1970, and an additional award was later made for the period May 31, 1970, to June 7, 1970.

* A copy of this decision is annexed as Exhibit "A".

A new application for compensation benefits has again apparently been submitted.

Apparently dissatisfied with the amount of his awards, plaintiff instituted an action pro se in federal court in 1974 against the Workmen's Compensation Board. Plaintiff sought \$150,000 in damages allegedly arising out of his injuries. The Board moved to dismiss on the ground that the court lacked subject matter jurisdiction and on the ground that the complaint failed to state a claim on which relief could be granted. FRCP 12(b)(1)(6). The court below, in a memorandum decision,* granted the motion.

Plaintiff then appealed to this Court, submitting to the Attorney General's office a "brief" consisting of a weighty and chaotic collection of correspondence with the Workmen's Compensation Board, fragments of unidentified hearing minutes, doctor's writings, and other assorted documents allegedly concerning his claim.

* Annexed as Exhibit "B"

ARGUMENT

APPELLANT'S DISPUTE WITH THE NEW YORK COMPENSATION BOARD CONCERNING THE AMOUNT OF BENEFITS TO WHICH HE IS ENTITLED FAILS TO STATE A FEDERAL CAUSE OF ACTION AND FAILS TO STATE A CLAIM OVER WHICH A FEDERAL COURT HAS SUBJECT MATTER JURISDICTION.

Viewed as sympathetically as possible, the gravamen of appellant's grievance appears to be the Workmen's Compensation Board did not grant him a large enough award of disability benefits

The federal courts have no jurisdiction to review a claim for benefits brought before the Workmen's Compensation Board. Powell v. Workmen's Compensation Board, 214 F. Supp. 283, 287 (SDNY, 1963), affd. 327 F. 2d 131, 138 (2d Cir. 1964). Thus, the court below properly dismissed the complaint for failure to state a federal cause of action and for lack of subject matter jurisdiction.

Appellant complains in his Civil Appeal Pre-Argument statement that the Board refused to pay according to his "Union 32B" Plan. However, any rights appellant may have under his "Union 32B" plan are totally unrelated to any action taken or not taken by the Board and are totally unrelated to any statutory authority or jurisdiction of the Board.

Even construing appellant's papers liberally, appellant nowhere suggests a basis for federal relief. There is no claim of discrimination of any kind. There is no claim that the Board's procedures are violative of due process. There is no claim that the decisions rendered are against the weight of the evidence. The gravamen of the complaint* is simply that appellant believes he did not get the full amount to which he thinks he is entitled. While the appellant's situation may inspire sympathy, the inalterable fact remains that the federal judiciary is not a forum in which appellant may obtain the relief he seeks.

It should be emphasized that the Workmen's Compensation Board has patiently considered appellant's claims time and time again. Appellant's case has been re-opened on numerous occasions. See Statement of Facts, supra. There is simply no basis for disturbing the Board's dispositions of appellant's claims.

Appellant does state in his pre-argument statement that in his opinion "somebody is being paid off". However there are no factual allegations whatsoever that would support such a conclusory claim.

* There does not appear to have an actual "complaint" in the District Court; only a confusing collection of assorted papers and documents and correspondence similar to the "brief" on this appeal.

CONCLUSION

THE JUDGMENT OF THE DISTRICT
COURT SHOULD BE AFFIRMED.

Dated: New York, New York
October 3, 1975

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Appellee

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

RALPH L. McMURRY
Assistant Attorney General
of Counsel

WORKMEN'S COMPENSATION BOARD
STATE OF NEW YORK

Before a Panel of three Members

Haskell Schwartz
George E. Yerry, Jr.

Present: Lawrence C. Mule' Presiding

on November 21, 1972

In the Matter of: James A. Pickens vs. A Beta Maintenance Company, Inc.

W.C.B. Case No. 0673 3623, 0694 9981

Carrier's Case No. 7476588 37 01 State Insurance Fund
8190088 24 01 " " "

On application of the claimant.

MEMORANDUM OF DECISION

These cases appear before the Board on claimant's application for review of the Referee decision which found no causally related disability.

Claimant, a fifty-two year old floor waxer, sustained a right inguinal hernia on April 6, 1967 (#0673 3623.) Compensability was established for right inguinal hernia, finding made that prostate condition is not related, compensation was awarded for periods of lost time to July 17, 1967 at \$60.00, and case closed. Claimant injured his back on June 12, 1969 #0694 9981, compensability was established, compensation awarded to March 12, 1970 at \$77.20, and case closed. Both cases were reopened on November 23, 1971 for consideration of further causally related disability and necessity for treatment. Dr. Matles testified that he examined claimant orthopedically on April 5, 1972 and found him able to work. Dr. Lewis testified that he examined claimant on January 26, 1972 and felt that claimant's inguinal hernia was well healed, that he had reported a low back syndrome consisting of a collapse of the L5,S-1 disc with low back derangement which presents as a chronic sprain of the low back, that he was disabled by virtue of his back, and that he would testify in accordance with his report. Dr. Kraft's X-ray report dated June 1, 1970 indicates a moderate thinning of lumbosacral disc with wedging deformity. The record indicates claimant received unemployment insurance benefits for intermittent periods from March 22, 1970 to March 28, 1971; and that he was awarded disability benefits from June 7, 1970 to September 1, 1970 for his prostate condition. Dr. Andersen reported a diagnosis of strained lumbar muscles on October 2, 1970 and that claimant could do his regular work on November 30, 1967.

Upon review of the evidence in the record, the Board Panel finds that claimant has no further causally related disability as to his right inguinal hernia (case #0673 3623). The Panel further finds that the claimant does have a continuing causally related disability to his back (case #0694 9981) from January 26, 1972.

Accordingly, the Referee decision filed July 13, 1972 in case #0673 3623 is AFFIRMED and the case is closed. The Referee decision filed July 13, 1972 in case #0694 9981 is REVERSED, finding is made as stated in preceding paragraph and the case is restored to the Referee calendar for appropriate award. All concur.

Haskell Schwartz 11/29/72. George E. Yerry, Jr. Lawrence C. Mule'

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES PICKENS,

Plaintiff,

-against-

WORKMEN'S COMPENSATION BOARD OF THE
STATE OF NEW YORK,

Defendant.

73 Civ. 3307
#40861

MEMORANDUM
DECISION

GAGLIARDI, D. J.

Plaintiff James Pickens, appearing pro se, instituted this action on August 8, 1973 against the Workmen's Compensation Board of the State of New York to recover \$150,000 in damages allegedly arising out of an accident which occurred in the course of his employment. Defendant moves for an order dismissing the complaint on the grounds that the court lacks subject matter jurisdiction of the complaint and that it fails to state a claim upon which relief may be granted under Rules 12(b) (1) and (6) of the Federal Rules of Civil Procedure.

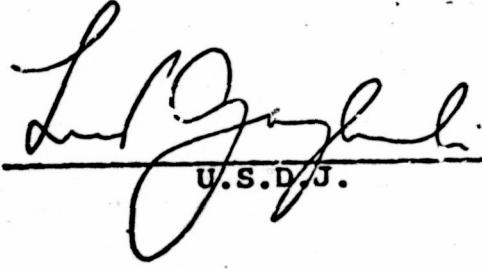
By Decision filed November 21, 1972 the Board found that the plaintiff's injury was only partially causally related to disability and affirmed the Referee's dismissal of that portion of the claim which was unrelated. The Board remanded to the Referee the claim which was causally related

and an award was thereafter made.

Apparently disturbed over the amount of his award and the denial of part of his claim, plaintiff seeks federal court review of the disability benefits granted by the Workmen's Compensation Board of the State of New York. However, the law is clear that this Court does not have jurisdiction to review a claim for benefits brought before the Workmen's Compensation Board. Powell v. Workmen's Compensation Board of the State of New York, 214 F. Supp. 283, 287 (S.D.N.Y. 1963), aff'd., 327 F.2d 131, 138 (2d Cir. 1964). Moreover, considering all of plaintiff's allegations as true, the complaint fails to state any federal claim for relief.

Accordingly, defendant's motion is granted and the complaint is dismissed.

So Ordered.



U.S.D.J.

Dated: New York, New York
June 24, 1974.

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MAGDALINE SWEENEY , being duly sworn, deposes and
says that she is employed in the office of the Attorney
General of the State of New York, attorney for Appellee
herein. On the 3rd day of October , 1975, she served
the annexed upon the following named person :

MR. JAMES PICKENS
57 W. 105th Street
#ID
New York, New York 10025

Appellant
~~Attorney~~ in the within entitled action by depositing
a true and correct copy thereof, properly enclosed in a post-
paid wrapper, in a post-office box regularly maintained by the
Government of the United States at Two World Trade Center,
New York, New York 10047, directed to said ~~Attorney~~ at the
address within the State designated by him for that
purpose.

Sworn to before me this
3rd day of October , 1975

Magdaline Sweeney

Ralph J. McNamee

Assistant Attorney General
of the State of New York

